

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Amendment of Section 73.202(b),)	MM Docket No. 99-284
Table of Allotments,)	RM-9697
FM Broadcast Stations.)	
(Galveston and Missouri City, Texas))	

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FEDERAL COMMUNICATIONS COMMISSION

NOTICE OF PROPOSED RULE MAKING

Adopted: September 8, 1999

Released: September 17, 1999

Comment Date: November 8, 1999

Reply Date: November 23, 1999

By the Chief, Allocations Branch

1. The Commission has before it for consideration a Petition for Rule Making filed on behalf of KQQK License, Inc. ("KQQK"), licensee of Station KQQK-FM, Galveston, Texas, requesting the reallocation of Channel 293C from Galveston, Texas, to Missouri City, Texas, and modification of its license for Station KQQK to specify Missouri City as its community of license. KQQK indicated that it would file an application for Channel 293C at Missouri City if the channel is allotted to the community.

2. KQQK filed its request pursuant to Section 1.420(i) of the Commission's Rules which permits the modification of a station's authorization to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest. See Modification of FM and TV Authorizations to Specify a New Community of License ("Change of Community R&O"), 4 FCC Rcd 4870 (1989), recon. granted in part ("Change of Community MO&O"), 5 FCC Rcd 7094 (1990). In support of its proposal, KQQK contends that adoption of its proposal will result in a preferential arrangement of allotments by providing Missouri City with its first local aural transmission service without depriving Galveston of its sole local broadcast service as Stations KLTO(FM), KHCB(AM) and KGBC(AM) are licensed to Galveston. KQQK provided a technical analysis proposing a site 6.7 kilometers from its current site showing that the entire community of Missouri City will be served with the required 3.16 mV/m contour and that 307,630 people will be provided a new service while no one will lose service under the proposal. KQQK recognizes the Commission's concern with the potential migration of stations from underserved rural areas to well-served urban areas but in this case KQQK states that it is proposing the reallocation from an urban location, Galveston, to Missouri

City, which is located in the Houston Urbanized Area. KQQK states that Missouri City is an independent community and has provided the following information in accordance with Faye and Richard Tuck, 3 FCC Rcd 5374 (1988). Signal Population coverage. Station KQQK-FM will increase service from 3,012,795 to 3,320,425, a 10% increase in population while no persons will lose service as a result of the proposal. Interdependence of Communities/Independence of Missouri City. Missouri City is an incorporated community with its own local government, an elected mayor, City Manager and City Council. The Missouri City Department of Public Works maintains 453 miles of streets in an area of 30.5 square miles. Missouri City has its own fire and police departments, library, parks and recreational facilities, as well as businesses and community organizations. Missouri City has seven elementary schools, three middle schools and two high schools. The Fort Bend Mirror, a weekly newspaper, is published in Missouri City. The community has its own post office and two zip codes (77459 and 77489). The community is incorporated with a mayor and council form of government. KQQK believes that Missouri City is the type of community intended to be favored under the Commission's allotment priorities as the reallocation will provide service to a community currently without local radio service.

3. We believe that KQQK's proposal warrants consideration since the allotment of Channel 293C at Missouri City could provide the community with its first local aural service while not depriving Galveston of its sole local aural service. KQQK has provided sufficient information to show that Missouri City is an independent community. Although KQQK is proposing to change its transmitter site, a staff engineering analysis confirms that there will be a gain in service of 276,349 people with no loss in service and that the gain area is served by at least five existing full-time services. According to a staff analysis, Channel 293C at Missouri City will provide a 70 dBu signal to 54.7 percent of the Houston, Texas, Urbanized Area and 100% coverage to both the Galveston, Texas, and Texas City, Texas, Urbanized Areas. Channel 293C at Galveston currently covers 44.4 percent of the Houston Urbanized Area and 100 percent of the Urbanized Areas of Galveston and Texas City with the 70 dBu contour. In accordance with Section 1.420(i) of the Commission's Rules, we shall not accept competing expressions of interest in the use of Channel 293C at Missouri City.

4. Channel 293C can be allotted to Missouri City, Texas, in compliance with the Commission's minimum distance separation requirements at KQQK's specified site.¹

5. In view of the fact that the proposed allotment could provide a first local service to Missouri City without depriving Galveston of its sole local service, the Commission believes it would serve the public interest to solicit comments on the proposal to allot Channel 293C to Missouri City, Texas. Therefore, we will seek comments on the proposed amendment to the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to Galveston and Missouri City, Texas:

¹ The coordinates for Channel 293C at Missouri City are 29-16-03 and 95-10-09. The site is 52.5 kilometers (32.6 miles) southwest of the community.

Community	Channel No.	
	Present	Proposed
Galveston, Texas	285A, 293C	285A
Missouri City, Texas	-----	293C

6. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

7. Interested parties may file comments on or before November 8, 1999, and reply comments on or before November 23, 1999, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D. C., 20554. Additionally, a copy of such comments should be served on the petitioner's counsel, as follows:

Lawrence Roberts
 Mary L. Plantamura
 Davis Wright Tremaine LLP
 1155 Connecticut Ave., NW, Suite 700
 Washington, D. C. 20036

8. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

9. For further information concerning this proceeding contact Kathleen Scheuerle, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon other parties to the proceeding unless the Commission specifically waives this service requirement.

Any comment which has not been served on the petitioner constitutes an ex parte presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in this proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204.(b) and 0.283 of the Commission's Rules, **IT IS PROPOSED TO AMEND** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off Procedures. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties, must be made in written comments reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal communications Commission, Washington, D, C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 445 Twelfth Street, SW, Washington, D. C 20554.